IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11169 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSUKHLAL KANJIBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR MB PARIKH for Petitioner No. 1

MR MAHENDRA M MEHTA for Petitioner No. 1

MR PREMAL JOSHI, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 12/08/2002

ORAL JUDGEMENT

1. Rule. Mr.Premal Joshi, learned A.G.P waives

service of rule. By consent of the learned Counsel appearing for the respective parties, the matter is taken up for final hearing today.

2. The petitioner purchased one residential property by a registered Sale Deed dated 10-02-1999. The said document came to be referred by the Sub Registrar, Bhavnagar under Section 32 of the Bombay Stamp Act, 1958 to the Dy. Collector, Stamp Duty Evaluation, Bhavnagar. On 29-03-2000 the said authority adjudicated deficit stamp duty at Rs.11,250/- which included penalty of Rs.250/=. The petitioner being aggrieved by the said order dated 29-03-2000 preferred an appeal before the Chief Controlling Revenue Authority. On 19-12-2000, the petitioner and his advocate were heard personally by the said authority and after quashing the order dated 29-03-2000 the said authority viz. Respondent No.2 enhanced the stamp duty to a figure of Rs.16,570/= which included penalty of Rs.250/=. The petitioner is aggrieved by the aforesaid action of Respondent No.2. The petitioner has, inter alia, also challenged the order of Respondent No.3 passed on 29-03-2000.

3. Heard Mr.Parikh, learned advocate appearing for the petitioner and Mr.Premal Joshi, learned A.G.P. appearing for the respondent.

4. It was submitted by Mr.Joshi, learned AGP that the petitioner had been heard by Respondent No.2 - authority and cannot have any grievance.

5. It is apparent from the facts which have come on record that the petitioner had approached Respondent No.2 authority in appeal against the order dated 29-03-2000 passed by Respondent No.3, whereunder the deficit stamp duty had been adjudicated at Rs.11,250/-. The petitioner had approached the Appellate Authority seeking relief and the hearing which was granted to the petitioner on 19-12-2000 was in connection with such appeal. It is not even the say of the respondent - authority that the petitioner was even orally informed that the said authority intended to enhance the deficit stamp duty.

6. It is well settled law that an enhancement of any duty or tax has to the supported by relevant provisions of Act. The authority has to first of all establish that such powers are available to it under the relevant statute. Thereafter, before exercising the said powers, it is necessary that the person, going to be affected by the proposed enhancement, be given a distinct show-cause notice setting out the reasons for the proposed

enhancement along with supporting material, if any. In the present case, Respondent No.2 has failed to show that it had any such jurisdiction which could be exercised by virtue of any statutory backing. Even assuming that such a statutory power was available, the impugned order dated 19-12-2000 itself shows that the petitioner was not offered any opportunity of meeting with any case for enhancement. In these circumstances, the said order cannot be allowed to stand.

7. The impugned order dated 19-12-2000 at Annexure 'E' is hereby quashed and set aside. Respondent No.2 authority is directed to hear the appeal of the petitioner afresh after giving proper opportunity of hearing to the petitioner and without being influenced by its earlier order or any other proceedings. The appeal of the petitioner filed against the order dated 29-03-2000 shall be restored on file as if no proceedings had taken place.

8. The petition is allowed accordingly to the aforesaid extent. Rule is made absolute. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

'Bhavesh'